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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/784,239	03/04/2013	Maarten Willem Kastelein	6049-01201	3228

35690 7590 04/26/2017
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EXAMINER

JENNISON, BRIAN W

ART UNIT	PAPER NUMBER
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3742

NOTIFICATION DATE	DELIVERY MODE
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04/26/2017

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MAARTEN WILLEM KASTELEIN and
GERARDUS MARIA KRAMER

Appeal 2015-003702¹
Application 13/784,239²
Technology Center 3700

Before MICHAEL C. ASTORINO, PHILIP J. HOFFMANN, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the final rejection of claims 19–28. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Our decision references Appellants’ Specification (“Spec.,” filed Mar. 4, 2013), Appeal Brief (“Appeal Br.,” filed Sept. 25, 2014), and Reply Brief (“Reply Br.,” filed Feb. 12, 2015), as well as the Final Office Action (“Final Action,” mailed Feb. 26, 2014) and the Examiner’s Answer (“Answer,” mailed Dec. 15, 2014).

² According to Appellants, “[t]he real party in interest is Allseas Group S.A.” Appeal Br. 2.

According to Appellants, the “invention relates to a guide device for use in the processing, in particular welding, of curved surfaces, in particular pipe surfaces, and more in particular pipelines.” Spec. 1, ll. 11–12.

Claims 19 and 25 are the only independent claims on appeal. Appeal Br., Claims App. We reproduce claim 19, below, as illustrative of the claims on appeal.

19. Guide device for guiding a welding carriage for welding of a pipe surface, comprising:

a flexible elongate body provided with a guide for the welding carriage, said flexible elongate body having an underside;

a tensioner for tensioning the flexible elongate body around the pipe;

wherein the flexible elongate body is provided on said underside with a plurality of spacers comprising a spring mechanism;

wherein a spacer of said plurality of spacers comprises a cup-shaped spring holder having a first open end directed towards the flexible elongate body and a second end remote from the flexible elongate body in the form of an annular foot having an annular contact surface for making contact with the pipe surface;

wherein the spring mechanism of the spacer is provided in the cup-shaped spring holder; and acts between the spring holder and the flexible elongate body.

Id.

REJECTION AND PRIOR ART

The Examiner rejects claims 19–28 under 35 U.S.C. § 103(a) as unpatentable over Van Heuveln (US 5,944,248, iss. Aug. 31, 1999),

Kazlauskas (US 4,726,300, iss. Feb. 23, 1988), and Stewart (US 6,345,593 B1, iss. Feb. 12, 2002).

ANALYSIS

Independent claim 19, from which claims 20–24 depend, recites a spacer of said plurality of spacers comprises a cup-shaped spring holder having a first open end directed towards the flexible elongate body and a second end remote from the flexible elongate body in the form of an annular foot having an annular contact surface for making contact with the pipe surface.

Appeal Br., Claims App. Independent claim 25, from which claims 26–28 depend, recites a similar limitation. *Id.*

The Examiner finds that “Kazlauskas clearly teach an annular foot.” Answer 5; Final Action 5. The Examiner determines that although “it is not known if the pad [(i.e., ‘foot’)] is solid [(i.e., cylindrical)] or hollow [(i.e., ring-shaped)]” in Kazlauskas, “the term ‘annular’ is [not only] defined as ring-shaped, it is also defined as circular or round.” Final Action 6. We note, however, that the Examiner does not provide any evidence that annular is defined as circular or round. Rather, we note that relevant definitions of annular include “of, relating to, or forming a ring,” and “having the form of a ring.” *Annular Definition*, Meriam-Webster.com, <https://www.merriam-webster.com/dictionary/annular> (last accessed Apr. 18, 2017); *Annular Definition 1*, DICTIONARY.COM UNABRIDGED, <http://www.dictionary.com/browse/annular> (last accessed Apr. 18, 2017). Thus, we agree with Appellants’ argument that, when the phrase “annular foot” is reasonably interpreted in view of their Specification and drawings, the phrase is understood to refer to a ring-shaped foot but does not refer to a foot that is solely circular or round. Appeal Br. 4–5, 7–8. Thus, inasmuch

as the Examiner does not support adequately the finding that Kazlauskas discloses an annular foot, we do not sustain the rejection on this basis.

The Examiner determines that “[e]ven if [Van] Heuveln in view of Kazlauskas fails to disclose the annular (ring) pad, this is merely a change in shape of the pad and would have been obvious to do so as no advantage to using an annular shaped pad is described.” Final Action 6; Answer 5. However, Appellants’ Specification does, in fact, describe advantages that are provided by the claimed annular foot. *See* Reply Br. 6 (citing Spec. 9, ll. 26–30). Thus, notwithstanding that the Examiner disagrees that the discussed advantages would result from the claimed annular foot (*see* Answer 6), we do not sustain the rejection on this basis.

The Examiner further determines that “[i]t would have also been obvious to utilize an annular shape [of the pad or foot] to provide a surface that is more adept for utilization on a cylindrical surface.” Answer 6. To the extent that this determination is a rationale as to why it would have been obvious to use Kazlauskas’s pad or foot in the Examiner’s proposed combination of references, for the reasons discussed above, we do not agree with the Examiner that Kazlauskas’s pad or foot is an annular foot as required by the claims. To the extent that this determination is a reason for modifying Kazlauskas’s pad or foot to be an annular foot that is a ring-shaped foot, as recited by the claims, we determine that the Examiner’s rationale lacks the required rational underpinning adequate to support the rejection. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (“[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”).

Appeal 2015-003702
Application 13/784,239

DECISION

We REVERSE the Examiner's rejection of claims 19–28.

REVERSED